## UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

| BARRY LINTON,                                    | :                       |
|--------------------------------------------------|-------------------------|
| Plaintiff                                        | ·<br>:                  |
| ν.                                               | :                       |
| NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION, | : C.A. No. 04-11362-RWZ |
| Defendant.                                       | :<br>:                  |

## DECLARATION OF LEVINA WONG TRANSMITTING DOCUMENTS RELIED <u>UPON IN DEFENDANT'S MOTION TO DIMISS THE COMPLAINT</u>

## I, LEVINA WONG, hereby declare:

- 1. I am a member of the bar of the Commonwealth of Massachusetts and of this Court. I am an associate with Ropes & Gray LLP, and counsel to Defendant, New York Life Insurance and Annuity Corporation ("New York Life"). I submit this Declaration in support of New York Life's Motion to Dismiss the Complaint to place before the Court documents referenced in New York Life's Memorandum of Law in Support of Its Motion.
- 2. Attached hereto as Exhibit A is a true and correct copy of plaintiff Barry Linton's Flexible Premium Variable Universal Life Insurance Policy (the "Policy"), issued by New York Life in June 1999.
- 3. Attached hereto as Exhibit B is a true and correct copy of the May 1, 1999 prospectus, filed with the Securities and Exchange Commission and issued in connection with the Flexible Premium Variable Universal Life Insurance Policy (the "1999 Prospectus").
- 4. Attached hereto as Exhibit C is a true and correct copy of the Telephone Authorization Form signed by Plaintiff Barry Linton.

Attached hereto as Exhibit D is a true and correct copy of the May 1, 2003 5. prospectus, filed with the Securities and Exchange Commission and issued in connection with the Flexible Premium Variable Universal Life Insurance Policy (the "2003 Prospectus").

I declare under penalty of perjury that the foregoing is true.

EXECUTED this 23rd day of July, 2004 in Boston, Massachusetts.

**CERTIFICATE OF SERVICE** 

I hereby certify that on this day a true copy of the above document was served upon the attorney of record for each party by mail/by hand